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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,284	09/22/2000	Thomas D. Dickson JR.	8132	1192

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EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/667,284	DICKSON ET AL.	
	Examiner	Art Unit	
	Drew E Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b)

Status

1)☒ Responsive to communication(s) filed on *23 October 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12,41 and 42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12, 41-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 7 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Reese et al [Pat. No. 5,619,901].

Reese et al teach a blending apparatus comprising a container at a blending location (Figure 1, #13), liquid supply lines (Figure 10B, #41), a blending device (Figure 1, #12), an ice supply which acts as a refrigeration system (Figure 2, #19), and a single, self-contained, stand-alone preparation and processing station to contain it all (Figure 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 4-6, 8-12, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al as applied above, in view of Farrell [Pat. No. 6,326,047].

Reese et al teach the above mentioned concepts. Reese et al also teach a control panel with a microprocessor (Figure 1, #54). Reese et al do not recite a peristaltic pump, a cleaning location with a cleaning liquid supply line, or six food supply lines. Farrell teaches a blending device comprising a peristaltic pump (Figure 5, #26). It would have been obvious to one of ordinary skill in the art to incorporate the peristaltic pump of Farrell into the invention of Reese et al since both are directed to blending devices, since Reese et al already included liquid supply sources (Figure 1, #20), since Reese et al required a means to provide precise portion control of the beverage or drink mix, since peristaltic pumps were a commonly known means to provide a metered supply of liquid as shown by Farrell, and since pumps were not dependent upon gravity, thereby permitting the location of the fluid tanks to another location, for instance below or beside the blending container, to provide more operating space in the kitchen or workplace. Although Reese et al do not specifically mention a cleaning location with a cleaning liquid supply line, it would have been obvious to one of ordinary skill in the art to provide a sink, with warm water from a spigot, in the invention of Reese et al in since this was the commonly known and accepted means to clean blender containers, and since microorganisms could grow on a blending container which has not been cleaned and thus create a risk of food borne illness. It would have been obvious to one of ordinary skill in the art to provide six supply lines with the invention of Reese et al since Reese et al already illustrated four supply lines (Figure 1), since Reese et al teach using "any reasonable number of receptacles" (column 5, lines 6-10), and since six would certainly be considered a reasonable number in the art of blending devices. Phrases such as

"wherein the foodstuffs comprise..." are merely preferred methods of using the claimed apparatus and as such are not given patentable weight.

5. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al as applied above, in view of Frank et al [Pat. No. 6,536,224].

Reese et al teach the above mentioned components. Reese et al do not recite a water supply. Frank et al teach a blending apparatus comprising a water supply (Figure 7, #21). It would have been obvious to one of ordinary skill in the art to include the water supply of Frank et al into the invention of Reese et al since both are directed to blending devices, since Reese et al already included liquid supply sources (Figure 1, #20) and taught the use of other liquids (column 5, line 60), since a water supply was commonly included in blending devices as shown by Frank et al (Figure 7, #21), and since the diversity of beverages which could be made by the device of Reese et al would be expanded due to the fact that many beverage mixtures commonly required water as an ingredient.

Response to Arguments

6. Applicant's arguments filed October 23, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a household refrigerator) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are

not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that the ice of Reese et al does not cool or refrigerate the contents of the machine. However, although Reese et al does not explicitly state that cooling occurs, it would be an inherent effect of the device.

Applicant argues that Reese et al teach away from the use of a pump. However, applicant does not point out any disclosure in Reese et al to back up this view. Furthermore, the use of pump would permit the liquid supply containers to be placed in a location which was not vertically above the blending device, for instance below a bar or counter.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Applicant argues that a sink would not "automatically clean a blending container when placed inside". However, it was commonly known that containers could be cleaned by being placed them in a sink and allowing it to soak. In addition, the spigot will "automatically" place water in the sink when it is activated.

Conclusion

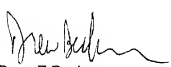
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.



Drew E Becker
Primary Examiner
Art Unit 1761